
United States Court of Appeals
for the
First Circuit

Case No. 22-1823

ESTADOS UNIDOS MEXICANOS,

Plaintiff-Appellant,

v.

SMITH & WESSON BRANDS, INC.; BARRETT FIREARMS
MANUFACTURING, INC.; BERETTA U.S.A. CORP.; BERETTA HOLDING
S.P.A.; CENTURY INTERNATIONAL ARMS, INC.; COLT'S
MANUFACTURING COMPANY LLC; GLOCK, INC.; GLOCK GES.M.B.H.;
STURM, RUGER & CO., INC.; WITMER PUBLIC SAFETY GROUP, INC.
d/b/a Interstate Arms,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS IN CASE NO. 1:21-CV-11269-FDS
(SAYLOR, C.J.)

**BRIEF OF *AMICI CURIAE* LAW ENFORCEMENT OFFICERS
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL
OF THE DISTRICT COURT**

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FRAP RULE 29 STATEMENTS

Pursuant to Federal Rule of Appellate Procedure (“FRAP”) 29(a)(2), undersigned counsel for *amici curiae* state that all parties have consented to the filing of this brief.

Pursuant to FRAP 29(a)(4)(E), undersigned counsel for *amici curiae* state that no part of this brief was authored, in whole or in part, by counsel for any party and no person, including but not limited to any party or party’s counsel, other than *amici curiae*’s counsel contributed money intended to fund the preparation or submission of this brief.

CORPORATE DISCLOSURE STATEMENT

Undersigned counsel for *amici curiae* certifies pursuant to FRAP 29(a)(4)(A) that the *amici* are each individuals, none has a corporate parent, none issues stock, and no publicly held corporation owns 10% or more of any of them, individually or collectively.

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici are life-long law enforcement officers and national experts on transnational crime.

Gil Kerlikowske is a fellow at the Center for the U.S. and Mexico focusing on border issues. Previously, he served as the only Senate-confirmed commissioner of U.S. Customs and Border Protection from 2014 to 2017; the director of the White House Office of National Drug Control Policy from 2009 to 2014 during which time he co-authored the President's Trans-National Organized Crime Strategy; the chief of the Seattle Police Department from 2000 to 2009; the deputy director of the U.S. Department of Justice's Office of Community Oriented Policing from 1998 to 2000; and the commissioner of the Buffalo Police Department from 1994 to 1998. He also was twice elected president of the Major Cities Chiefs Association.

Jim Bueermann is a Senior Fellow and member of the Advisory Board at the Center for Evidenced-Based Crime Policy. Previously, he served as president of the National Police Foundation from 2012 to 2018; executive fellow at the U.S. Department of Justice's National Institute of Justice from 2011 to 2012; and spent 33 years with the Redlands (CA) Police Department, retiring as Chief of Police and Director of Housing, Recreation and Senior services in 2011. He also was appointed to the National Academies of Sciences Working Group on Crime Trends and its Panel on Proactive Policing.

Adrian Diaz is the Chief of the Seattle Police Department, a department in which he has served for over two decades. His career spans work in Patrol, the Mountain Bike Unit, the Anti-Crime Team, and the Investigations Bureau before being promoted to Deputy Chief and now Chief. Chief Diaz is also a national expert in community policing, misdemeanor justice, and juvenile justice, with many publications on these topics.

Kim Dine is the former head of the U.S. Capitol Police, charged with responsibility for securing the Capitol for lawmakers, staff, and visitors. Previously, he served as the Chief of the Frederick, Maryland, Police Department after rising through the ranks of the Metropolitan Police Department of Washington, D.C., to Assistant Chief of Police. He currently consults on critical issues in policing with the United States Department of Justice, the National Policing Institute (formerly the National Police Foundation), the International Chiefs of Police Association, the Police Executive Research Forum, and other entities. He is a graduate of the FBI National Academy.

Clark Kimmerer is on the faculty at the Center for Homeland Security at the US Naval Postgraduate School and sits on the board of the National Alliance for Public Safety. He served for 31 years on the Seattle Police Department, retiring after sixteen years in service as the Assistant Chief from 1998 to 2014, with positions held in the SWAT Team, Internal Affairs, Vice and Narcotics section, among others. In

2006 he was appointed syndicate leader to the “Leadership in Counterterrorism (LinCT)” program in Australia.

Dan Oates has twice served as the Chief of the Aurora Police Department, first from 2005 to 2014, and again as interim chief for most of 2022. Previously, he served as Chief of the Miami Beach Police from 2014 to 2019; Chief of the Ann Arbor Police from 2001 to 2005; and from 1980 to 2001 held several positions in the New York Police Department, including Chief of the Intelligence Division and Commander of the Legal Bureau. He was the president of the Colorado Association of Chiefs of Police and holds a law degree *cum laude* from New York Law School.

Darrel Stephens is Co-director of the Policy, Security Technology, and Private Security Research and Policy Institute. Previously, he served as Executive Director of the Major Cities Chiefs Association from 2010 to 2017; a faculty member at the Public Safety Leadership Program in the School of Education at Johns Hopkins from 2008 to 2013; Chief of the Charlotte-Mecklenburg Police Department from 1999 to 2008; Chief of the St. Petersburg Police and City Administrator from 1992 to 1998; and Executive Director of the Police Executive Research Forum from 1986 to 1992. He also has served as an advisor to the President’s Task Force on 21st Century Policing.

In their many years of service to the United States, *Amici* were responsible for understanding, identifying, and preventing crime perpetrated by transnational

criminal organizations. As a result, they have an interest in this proceeding because Defendants-Appellees' practices empower transnational criminal organizations causing tremendous violence and harm on both sides of the border, including intimidating and murdering Mexican law enforcement officers and fueling the American fentanyl epidemic.

SUMMARY OF THE ARGUMENT

Defendants-Appellees' sales and manufacturing practices arm the transnational criminal organizations engaged in a deadly war over lucrative drug trafficking routes. Access to American-made firearms flowing across the U.S.-Mexico border at ever-increasing rates empowers these cartels. In turn, they use their power to unleash havoc in Mexico and the United States.

This status quo is not inevitable. U.S. manufacturers have long been aware that their practices put weapons in the hands of gun smugglers who traffic those weapons across the border to Mexican cartels. Given the unending supply of individuals who are either willing or forced to engage in trafficking, attempting to halt the supply of weapons at the border is not a solution. As a result, U.S. gun manufacturers like Defendants-Appellees are the point at which the flow of firearms into the illegal market must be stemmed. But those manufacturers have steadfastly maintained their dangerous sales and manufacturing practices despite decades of evidence and requests to change their ways.

Their decision has devastating effects on both sides of the border. Mexican cartels use their growing arsenal to terrorize the Mexican people, gain the upper hand against law enforcement, and dominate drug manufacturing and trafficking. With the firearms, Mexican cartels have taken over as the primary producer of fentanyl, a synthetic opioid that is now the leading cause of overdose deaths in the U.S. The ties between American guns, Mexican cartel power, and the fentanyl epidemic are clear and well-documented; indeed, numerous U.S. government agencies have identified American guns as a key catalyst of fentanyl trafficking by Mexican cartels. These ties strike at the heart of this case—a reality that the District Court did not appreciate, and one that *Amici* urge this Court to consider in evaluating the District Court’s decision.

ARGUMENT

I. Guns Trafficked from the U.S. Are Used to Commit Crime in Mexico

Mexico and the United States have taken diametrically opposite approaches to gun regulation. Mexico has a single gun store in the whole country, along with “some of the most restrictive gun legislation in the world.”¹ The United States, in contrast, is home to “the largest legal gun market in the world.”² Accordingly,

¹ Topher McDougal et al., *The Way of the Gun: Estimating Firearms Traffic Across the U.S.-Mexico Border*, U. San Diego Trans-Border Inst. (Mar. 2013), https://catcher.sandiego.edu/items/peacestudies/way_of_the_gun.pdf.

² Univ. of Arizona, *Arms Trafficking Between the U.S. and Mexico* (Aug. 9, 2021), <https://mexico.arizona.edu/revista/arms-trafficking-between-us-mexico>

individuals in Mexico seeking ready access to firearms turn to the United States. As many as 90% of guns in Mexico come from the United States.³

Importantly, these guns are not legally purchased in the United States for legal use in Mexico. To the contrary, a staggering and growing volume is trafficked over the southern border into the hands of Mexican cartels. According to one estimate, 2.5 million weapons were smuggled across the border in the twelve-year period between 2010 and 2022.⁴ The Mexican government, for its part, estimates that 200,000 firearms are smuggled into the country from the United States each year.⁵ And the volume is growing. One study found that the number of firearms trafficked across the U.S.-Mexico border has increased dramatically in the past several decades, from an annual rate of roughly 88,000 firearms between 1997 and 1999 to

³ McDougal et al., *supra* note 1 at 10.

⁴ José Pablo Ampudia, *A Gram Per Gun*, (August 2, 2022), <https://www.thinkglobalhealth.org/article/gram-gun>; *see also* Ryan C. Berg, *The Bicentennial Framework for Security Cooperation: New Approach or Shuffling the Pillars of Mérida?*, Center for Strategic & Int'l Studies (Oct. 29, 2021), <https://www.csis.org/analysis/bicentennial-framework-security-cooperation-new-approach-or-shuffling-pillars-merida>; Albinson Linares, *'Not Normal': Big flow of U.S. arms to Mexico 'can't be denied,' author says*, NBC News (June 29, 2022), <https://www.nbcnews.com/news/latino/not-normal-big-flow-us-arms-mexico-cant-denied-author-says-rcna1700>.

⁵ U.S. Government Accountability Office, *Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis* (Feb. 22, 2021). <https://www.gao.gov/products/gao-21-322> (hereinafter "*Firearms Trafficking*").

roughly 253,000 firearms from 2010 to 2012.⁶ These trafficking rings are run by Mexican cartels, who can “bypass [Mexico’s] legal systems and get all the firearms they want from the vast U.S. gun market, smuggled by thousands of gun runners.”⁷

Trafficked American guns are, unsurprisingly, often used for crime. U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) research concluded that U.S.-sourced guns were used to commit crimes in nearby countries approximately once every 31 minutes.⁸ Mexico is, by far, the leading destination for trafficked crime guns. ATF reported that between 2017 and 2021, 74% of firearms recovered at foreign crime scenes and traced back to the United States were recovered in Mexico—a total of 33,088 firearms in all.⁹

⁶ McDougal et al., *supra* note 1 at 2 (“Preliminary Findings”); *see also* Berg, *supra* note 4 (“[A] large percentage of [smuggled weapons] find[] their way into the armories of criminal organizations.”).

⁷ Iacono Grillo, *How Gun Smugglers Flood Mexico with Cheap U.S. Guns*, Vice (Mar. 11, 2021), <https://www.vice.com/en/article/5dpvex/how-smugglers-flood-mexico-with-cheap-us-guns>; *see also* ATF, *Mexico – Data Source: Firearms Tracing System* (Mar. 10, 2020), <https://www.atf.gov/file/144886/download> (finding that each year tens of thousands of firearms seized by Mexican law enforcement are traced to U.S. manufacturers).

⁸ Center for American Progress, *Beyond Our Borders: How Weak U.S. Gun Laws Contribute to Violent Crime Abroad* (Feb. 2, 2018), <https://www.americanprogress.org/article/beyond-our-borders/>.

⁹ ATF, *Crime Guns Recovered Outside the United States and Traced by Law Enforcement*, <https://www.atf.gov/file/175296/download> (hereinafter “*Crime Guns Recovered*”); *see also* McDougal et al., *supra* note 1, at 12.

II. U.S. Gun Manufacturers' Sales and Manufacturing Practices Enable Gun Trafficking to Mexico

U.S. gun manufacturers' sales and manufacturing practices enable this vast business of southbound gun trafficking. Those interested in smuggling firearms across the U.S.-Mexico border "exploit the same criminal opportunities to divert firearms from legal commerce as . . . domestic gun traffickers."¹⁰ This is possible because U.S. gun manufacturers impose "few checks against" the illegal practices that put guns into traffickers' hands.¹¹

Government agencies and industry observers have spent decades studying how firearms make their way into the black market, and identified straw purchases, multiple sales, and gun shows as key entry points.¹²

Straw purchases involve the purchase of a gun by an individual who is not the actual end-user of the gun; these straw buyers get paid by traffickers "something like a hundred bucks to go into a gun store and buy one in their own name."¹³

¹⁰ *Crime Guns Recovered*, *supra* note 9, at 22.

¹¹ McDougal et al., *supra* note 1, at 8 (noting, in discussion of arms trafficking across the U.S.-Mexico border, that "there are few checks against illicit practices such as sales to 'straw purchasers,' who buy guns for the purpose of illegal resale or trafficking"); see also Grillo, *supra* note 7 (describing how straw purchases at gun shows, among other avenues, facilitate cross-border arms smuggling).

¹² Allen Rostron, *Smoking Guns: Exposing the Gun Industry's Complicity in the Illegal Gun Market*, Legal Action Project: Brady Center to Prevent Gun Violence (2012) at v.

¹³ Seth Harp, *Arming the Cartels: The Inside Story of a Texas Gun Smuggling Ring*, *The Rolling Stone* (Aug. 7, 2019), <https://www.rollingstone.com/culture/culture->

Historically, straw buyers were often individuals with substance-abuse problems who were indebted to their drug dealers.¹⁴ Increasingly, women with clean criminal records are pressured by relatives and boyfriends to purchase guns for traffickers.¹⁵

In addition, traffickers (either directly or through straw purchasers) are able to amass weapons caches through “multiple sales . . . the simultaneous or rapid purchase of multiple guns by one individual.”¹⁶ This practice has long been identified as a “risk factor for gun trafficking.”¹⁷ Notably, “no manufacturer or distributor makes any effort to limit or place conditions on large-volume sales of its guns by dealers.”¹⁸

features/arming-mexican-cartels-inside-story-of-a-texas-gun-smuggling-ring-866836/; *see also* Kevin Johnson, *Gun Traffickers Recruiting Women as Buyers*, U.S.A. Today (Aug. 23, 2009), (noting that Mexican cartels recruit grandmothers, single mothers, and expectant mothers as straw purchasers to assist in the flow of weapons to Mexico), https://usatoday30.usatoday.com/news/nation/2009-08-23-gun-smuggling_N.htm.

¹⁴ Kevin Sieff, *The Sniper Rifles Flowing to Mexican Cartels Show a Decade of U.S. Failure*, Wash. Post (Nov. 19, 2020), <https://www.washingtonpost.com/graphics/2020/world/mexico-losing-control/mexico-drug-cartels-sniper-rifles-us-gun-policy/>.

¹⁵ Johnson, *supra* note 13.

¹⁶ Christopher Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use*, Jerry Lee Center of Criminology at the Univ. of Pennsylvania (2007); *see also* Rostron, *supra* note 12 (“Allowing customers to purchase unlimited quantities of guns is another industry practice feeding guns into the illegal market.”).

¹⁷ Koper, *supra* note 16.

¹⁸ Rostron, *supra* note 12, at v.

Gun smugglers also turn to private sellers, particularly at gun shows—a reflection of the reality that, whereas licensed firearms dealers are required to ask for identification, some “private sellers offer[] guns without requiring any paperwork at all.”¹⁹ “The federal government has also warned the industry that gun shows are an important source of guns for criminals because unlicensed individuals often sell large quantities of guns there without criminal background check or record-keeping requirements.”²⁰

Once acquired, these firearms are ferried across the U.S.-Mexico border via a “well organized” network of “[g]unrunners.”²¹

Notably, Defendant-Appellees are among the most likely to have their firearms recovered at foreign crime scenes. According to ATF, Glock and Smith & Wesson are the two leading manufacturers of pistols recovered at crime scenes abroad and then traced back to the United States, while Smith & Wesson is the leading manufacturer of revolvers recovered at crime scenes abroad and traced to the United States.²² Those figures are particularly troubling given that “the majority

¹⁹ Grillo, *supra* note 7; *see also* ATF, “How Guns Flow from Legal to Illegal Commerce,” <https://www.atf.gov/resource-center/infographics/how-guns-flow-legal-illegal-commerce>.

²⁰ Rostron, *supra* note 12, at v.

²¹ Harp, *supra* note 13.

²² *Crime Guns Recovered*, *supra* note 9, at 13.

of reported homicides [in Mexico] are committed not with assault rifles, but rather pistols and revolvers.”²³ ATF’s statistics suggest that thousands of those two companies’ firearms were recovered at crime scenes in Mexico in the four-year period between 2017 and 2021.²⁴ Indeed, the two firearms most frequently recovered at a crime scene abroad and then traced back to the United States were the Glock 9mm pistol and the Smith & Wesson 9 mm pistol.²⁵ Three other firearms manufactured by the two companies—the Glock .40 caliber pistol, the Smith & Wesson .40 caliber pistol, and the Smith & Wesson .38 caliber revolver—ranked within the top ten of such firearms.²⁶

III. U.S. Guns Have Caused a National Security Crisis on Both Sides of the Border

A. U.S. Guns Have Empowered Mexican Cartels

Because U.S. manufacturers have failed to appropriately respond to the evidence that their wares are being illegally trafficked, U.S.-manufactured guns have played a critical role in arming and empowering Mexican cartels. As one retired U.S. Drug Enforcement Administration (“DEA”) agent described it, “smuggling guns and ammo across the border is just as important” to those cartels “as cash coming back

²³ McDougal et al., *supra* note 1, at 4.

²⁴ *Crime Guns Recovered*, *supra* note 9, at 5, 13.

²⁵ *Id.* at 13–14.

²⁶ *Id.*

from the dope they sell.” Notably, “the Mexican national homicide rate [rose] by 84 percent between 2015 and 2020, and the percentage of gun-related homicides rose from 24 percent in 2004 to 69 percent in 2018—percentages that track contemporaneously with increased gun production in the United States.”²⁷ The steady flow of firearms has also led to a number of secondary effects, including the rise in “gun-fueled gender violence”—a phenomenon where the line between “outsourced intimate partner violence” and “cartel messaging” can be difficult to discern, given the sheer scale of the violence.²⁸

The Mexican and U.S. governments have both identified trafficking of U.S. guns to Mexico as a national security issue. The U.S. Government Accountability Office stated that “[t]rafficking of U.S.-sourced firearms into Mexico” is a “a national security threat, as it facilitates the illegal drug trade and has been linked to organized crime.”²⁹ This conclusion was corroborated by an analysis of smuggling trends conducted by the U.S. Immigrations and Customs Enforcement (“ICE”).³⁰ Similarly, a 2020 Mexican government study found that the “flood” of millions of

²⁷ Ampudia, *supra* note 4.

²⁸ Meaghan Beatley, *America’s Guns Fuel Mexico’s Domestic Violence Epidemic*, Foreign Policy (May 27, 2020), <https://foreignpolicy.com/2020/05/27/american-guns-mexico-domestic-violence-femicide/>.

²⁹ *Firearms Trafficking*, *supra* note 5. The Mexican government’s pursuit of the instant litigation suggests it, too, sees the influx of firearms from U.S. firearms manufacturers and distributors’ role as a threat to its own national security.

³⁰ *Id.*

American guns coming across the border “has been a key accelerant in the security crisis now confronting the country.”³¹

The scale of the problem is significant enough that U.S. agencies involved in securing the U.S.-Mexico border have devoted substantial resources to deterring south-bound gun trafficking. In 2020, ICE teamed with the Department of Homeland Security’s Customs and Border Protection (“CBP”) to establish a joint operation to intercept firearms being smuggled into Mexico.³² Between 2015 and 2017, ICE-led taskforces seized 1,104 firearms along the U.S.-Mexico border; in the first 10 months of 2020 alone, CBP seized 321 firearms.³³ The Department of State has led a working group to coordinate U.S. efforts to combat cross-border arms trafficking with the government of Mexico,³⁴ and provided \$53 million to help build Mexico’s capacity to address illicit arms trafficking.³⁵

B. Cartels Empowered by U.S. Guns are Intimidating and Murdering Mexican Law Enforcement Officers

U.S.-sourced firearms “have provided cartels with firepower capable of overwhelming law enforcement on both sides of the border.”³⁶ The cartels are using

³¹ Sieff, *supra* note 14.

³² *Firearms Trafficking*, *supra* note 5.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Ampudia, *supra* note 4.

trafficked weapons to kill record numbers of police officers – 464 in the first nine months of 2020 alone.³⁷ At least one police officer is killed every day in Mexico.³⁸

The following are just some examples of the tragic reality that heavily armed cartels have unleashed on Mexican law enforcement:

- One cartel kidnapped several members of an elite police force, tortured them until they revealed fellow officer’s names and home addresses, and then went to the officers’ homes on their days off to kill them in front of their families.³⁹

The cartel also hung a banner stating that for each member that was arrested, it would kill two law enforcement officers, writing “[w]e are coming for all of you.”⁴⁰ The Associated Press reported that the cartel was “aiming to eradicate” the police unit.⁴¹

³⁷ Sieff, *supra* note 14. This trend has continued in recent years. See Kirk Semple & Oscar Lopez, *13 Law Enforcement Officers Killed in Mexico Ambush*, New York Times (Mar. 18, 2021), <https://www.nytimes.com/2021/03/18/world/americas/mexico-police-ambush.html>; CBS News, *At least 12 dead after police officers lured into ambush-style shooting in Mexico: “There can be no truce”* (June 24, 2022), <https://www.cbsnews.com/news/ambush-police-shootout-deaths-mexico/>.

³⁸ Luis Chaparo, *Cartels are on a Cop-Killing Spree in One of Mexico’s Most Violent States*, Vice (Apr. 7, 2022), <https://www.vice.com/en/article/n7ny9d/zacatecas-cartel-police>.

³⁹ Mark Stevenson, *In Mexico, Cartels are Hunting Down Police at Their Homes*, (May 30, 2021), <https://apnews.com/article/caribbean-mexico-police-f6ea7798ca3cc171ac13b3a5a6a6c266>.

⁴⁰ *Id.*

⁴¹ *Id.*

- Officers in one Mexican state went on strike after 16 of their colleagues were murdered during the first four months of the year. One was shot dead just a few blocks from his station after his shift ended. Another was a few blocks away when several armed men blocked the road and fired into his car at least 20 times, killing the officer and his girlfriend.⁴²
- A cartel used armored vehicles to attack a prison, breaking free a total of 30 inmates including a top gunman for the cartel. Nineteen people including guards and other prisoners died in the raid.⁴³
- Thirteen police officers and state prosecutor's office agents were killed in an ambush on a police convoy by a criminal gang.⁴⁴
- Cartels used U.S.-purchased guns to shoot down a law enforcement helicopter.⁴⁵
- Gunmen fired approximately 200 bullets at the car of a police chief.⁴⁶

⁴² Chaparo, *supra* note 38.

⁴³ Reuters, *Mexican Cartel Leader Dies in Shootout After Mass Jail Break* (Jan. 5, 2023), <https://www.reuters.com/world/americas/mexican-cartel-leader-dies-shootout-after-mass-jail-break-2023-01-05/>.

⁴⁴ British Broadcasting Corporation ("BBC"), *Mexico Violence: Gunmen Kill 13 in Ambush on Police Convoy* (Mar. 19, 2021), <https://www.bbc.com/news/world-latin-america-56452464>.

⁴⁵ The Guardian, *Gun used by Mexican cartel to shoot down military helicopter bought in U.S.* (Oct. 27, 2022), <https://www.theguardian.com/us-news/2022/oct/27/mexican-cartel-gun-military-helicopter-oregon>

⁴⁶ BBC, *Mexican Police Chief Killed in Hail of Bullets in Sinaloa*, (May 25, 2021), <https://www.bbc.com/news/world-latin-america-57239682>.

- A .50 caliber gun was used in a cartel’s daytime assassination attempt on Mexico City’s police chief.⁴⁷
- In an October 2019 ambush in Michoacán, officers are heard pleading for backup as the gunfire continues. At least one .50 caliber rifle and several AK-47s and AR-15s from the US were used in the attack.⁴⁸
- Three officers were killed when they approached a house where cartel members were hiding; four kidnapping victims were recovered from the house.⁴⁹

As one Mexican security official speaking on the condition of anonymity observed, these tragic incidents are a “telling example of what happens when the cartels are better armed than the police.”⁵⁰

⁴⁷ *Id.*

⁴⁸ Arkansas Democratic Gazette, *.50-caliber from U.S. on bloody rampage in Mexico* (Nov. 22, 2020), <https://www.arkansasonline.com/news/2020/nov/22/50-caliber-from-us-on-bloody-rampage-in-mexico/>.

⁴⁹ Associated Press, *3 police dead in Mexico City shootout with cartel gunmen* (Mar. 17, 2023), <https://www.foxnews.com/world/3-police-dead-mexico-city-shootout-cartel-gunmen>.

⁵⁰ Sieff, *supra* note 14, <https://www.washingtonpost.com/graphics/2020/world/mexico-losing-control/mexico-drug-cartels-sniper-rifles-us-gun-policy/>.

C. Cartels Armed by American Weapons Have Caused the American Fentanyl Epidemic

Trafficked American guns have allowed Mexican cartels to become the leading producers and traffickers of the deadly drug fentanyl. Fentanyl production has rapidly accelerated in the past five years. The DEA reports Mexican cartels source chemicals, turn them into fentanyl, and then traffic the drug into the United States.⁵¹ Fentanyl production and trafficking from Mexico have quickly increased. The State Department reported that as of 2022, Mexico was “the only significant source of illicit fentanyl or fentanyl analogues trafficked into the United States.”⁵² Between 2017 and 2018, the Mexican government estimated a 75% increase in the number of fentanyl seizures per month.⁵³ The amount of fentanyl seized along the U.S./Mexico border is a reliable gauge of total supply, and has “jumped ninefold during the past five years.” Indeed, U.S. authorities confiscated more fentanyl

⁵¹ United States Drug Enforcement Administration, *Fentanyl Deaths Climbing, DEA Washington Continues the Fight* (Feb. 16, 2022), <https://www.dea.gov/stories/2022/2022-02/2022-02-16/fentanyl-deaths-climbing-dea-washington-continues-fight>.

⁵² United States Department of State Bureau of International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report Volume 1* (Mar. 2023), <https://insightcrime.org/wp-content/uploads/2023/03/INCSR-2023-Vol-1.pdf>.

⁵³ Office of National Drug Control Policy, *National Drug Control Strategy: Southwest Border Counternarcotics Strategy 2020* (Feb. 2020), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/02/2020-Southwest-Border-Counternarcotics-Strategy.pdf>.

between July and December 2022 than in all of 2018, an average of 2,200 pounds a month.⁵⁴

With the growth in production has come a growing and deadly impact. As San Diego U.S. Attorney Randy Grossman put it, “[a] decade ago, we didn’t even know about fentanyl, and now it’s a national crisis.”⁵⁵ By 2017, fentanyl became the leading cause of overdose deaths in the United States.⁵⁶ The CDC reports that an average of 150 people a day are dying of a synthetic opioid overdose (including fentanyl) in the United States.⁵⁷ Fentanyl deaths in San Diego rose 787% in five years.⁵⁸ Tragically, over 70,000 people died in the United States from fentanyl overdose between August 2022 and August 2023.⁵⁹

⁵⁴ Nick Miroff, et al., *Cause of Death: Washington Faltered as Fentanyl Gripped America*, Washington Post (Dec. 12, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/dea-fentanyl-failure/> (hereinafter, *Cause of Death*).

⁵⁵ United States Attorney’s Office, Southern District of California, *Fentanyl Seizures at Border Continue to Spike* (Aug. 11, 2022), <https://www.justice.gov/usao-sdca/pr/fentanyl-seizures-border-continue-spike-making-san-diego-national-epicenter-fentanyl>.

⁵⁶ *Cause of Death*, *supra* note 53.

⁵⁷ Center for Disease Control, *Fentanyl Facts* (last reviewed Feb. 23, 2022), <https://www.cdc.gov/stopoverdose/fentanyl/index.html#:~:text=Fentanyl%20is%20a%20synthetic%20opioid,nonfatal%20overdoses%20in%20the%20U.S.&text=There%20are%20two%20types%20of,fentanyl%20and%20illicitly%20manufactured%20fentanyl>.

⁵⁸ *Cause of Death*, *supra* note 53.

⁵⁹ *U.S. Turns Up Heat on Mexico After Cartel Kidnappings*, Financial Times, (Mar. 12, 2023), <https://www.ft.com/content/074edb94-7cd1-4da1-96ce-a3ebd9a1b49f>.

Law enforcement leaders have traced the fentanyl epidemic to Mexican cartels. In April 2022, the DEA warned of a spike in fentanyl-related mass overdose deaths, stating that they were tracing these events back to the “international cartels responsible for the surging domestic supply of fentanyl”.⁶⁰ Similarly, a representative of the National Sheriffs’ Drug Enforcement Committee noted that these overdose deaths “are part of a strategic maneuver by the cartels and it must be stopped.”⁶¹ The United States declared international illegal drug trafficking a national emergency in December 2021, specifically noting fentanyl as part of the crisis.⁶²

Government officials have identified U.S. guns as a key ingredient in the cartels’ expanding power and drug trafficking capacity. Indeed, combatting fentanyl production and gun trafficking was the focus of the 2023 North American Leaders’ Summit among U.S. President Joseph Biden, Mexican President Manuel López Obrador, and Canadian Prime Minister Justin Trudeau.⁶³ Leadership from Homeland

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Executive Order on Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade (Dec. 15, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/15/executive-order-on-imposing-sanctions-on-foreign-persons-involved-in-the-global-illicit-drug-trade/>.

⁶³ Joint Statement from Mexico and the United States on the Launch of Phase II of the Bicentennial Framework for Security (Mar. 10, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/10/joint->

Security Investigations (“HSI”) for U.S. Immigration and Customs Enforcement have also echoed this concern. In Congressional testimony just this month, Acting Deputy Executive Associate Director Anthony Salisbury stated that guns travel south to Mexico to the cartels, while fentanyl travels north, and that the United States is a “source country” for weapons traveling to Mexico “into the hands” of the cartels.⁶⁴

In an October 27, 2022, field hearing on “Deadly Distribution: How Fentanyl Crosses Borders and Claims Lives,” HSI Assistant Director Steven Cagen emphasized this connection. He stated that his agency’s work was to “attack the criminal networks operating in the United States and elsewhere that source and smuggle U.S.-origin firearms and ammunition to Mexico, fueling violence and enabling cartels to flourish.”⁶⁵ Specifically, efforts to “combat[] the flow of illicit drugs into the United States includes combating the flow of illicit firearms and ammunition into Mexico” because cartels “secure sufficient armaments to remain a persistent threat to Mexican security forces.”⁶⁶

[statement-from-mexico-and-the-united-states-on-the-launch-of-phase-ii-of-the-bicentennial-framework-for-security/](#).

⁶⁴ Rep. Dan Goldman (@RepDanGoldman), Twitter (Mar. 8, 2023, 12:56 PM), <https://twitter.com/repdangoldman/status/1633527093345624064?s=12&t=zEmMMLrTV5YzAAwzPhW-0Q>.

⁶⁵ U.S. Immigration and Customs Enforcement, *Statement of Steven Cagen* (Oct. 27, 2022), <https://www.ice.gov/doclib/news/library/speeches/221027cagen.pdf>.

⁶⁶ *Id.*

Thus, the easy availability of U.S. guns has empowered Mexican cartels and allowed them to dramatically increase fentanyl production and trafficking, with innocent people paying the price.

IV. Gun Manufacturers Fail to Act in the Face of this Well-Documented Problem.

The reality of illegal firearms trafficking across the U.S.-Mexico border is well known to American gun manufacturers. Indeed, report after report has confirmed that the vast majority of guns used to commit crime in Mexico are trafficked from the United States.⁶⁷ And most of the guns used in crimes in Mexico are purchased near the U.S.-Mexico border, in Texas or Arizona.⁶⁸

The methods through which gun trafficking occurs (as described above, section II), have been understood for decades. Indeed, in 2001 the U.S. Department of Justice urged the firearms industry to “substantially reduce the illegal supply of guns by taking . . . steps to control the chain of distribution for guns.”⁶⁹ And the previous year ATF made nearly the same request, asking “the firearms industry [to] take[] affirmative steps to track weapons and encourage proper operation of Federal

⁶⁷ *Id.*

⁶⁸ Sieff, *supra* note 14.

⁶⁹ Department of Justice, *Gun Violence Reduction: National Integrated Guns Violence Reduction Strategy* § IV (2001), <https://www.justice.gov/archive/opd/gunviolence.htm>.

Firearms Licensees to ensure compliance with all applicable laws.”⁷⁰

In an historic March 2000 settlement agreement with the U.S. government and various cities, Defendant-Appellee Smith & Wesson accepted an obligation to sell to only “authorized distributors and authorized dealers” who abided by a code of conduct, including the requirement that the distributors and dealers store all trace requests and report them to Smith & Wesson.⁷¹ But almost immediately, Smith & Wesson faced a severe backlash from the National Rifle Association, gun buyers, and other firearms manufacturers.⁷² Smith & Wesson suffered a 40% decline in sales the year after it entered the 2000 Agreement; it was then acquired by another company, and swiftly reneged on its commitments.⁷³ The company has avoided any meaningful conversation about gun safety measures ever since.⁷⁴

Smith & Wesson’s silence is consistent with the industry practice. A former lawyer for the National Rifle Association explained that “[l]eaders in the industry have consistently resisted taking constructive voluntary action to prevent firearms

⁷⁰ ATF, *2000-2005 Strategic Plan 11* (2000), <https://www.atf.gov/file/57641/download>.

⁷¹ Christina Austin, *How Gun Maker Smith & Wesson Almost Went Out of Business When it Accepted Gun Control*, Business Insider (Jan. 21, 2013), <https://www.businessinsider.com/smith-and-wesson-almost-went-out-of-business-trying-to-do-the-right-thing-2013-1>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

from ending up in the illegal gun market and have sought to silence others within the industry who have advocated reform.”⁷⁵ Indeed, in Congressional testimony in summer 2022, five gun manufacturers asserted that they do not track crimes committed with their products.⁷⁶

The reality is that gun trafficking is good for American gun manufacturers’ business. Trafficking firearms across the U.S.-Mexico border is “big business, a southbound black market worth hundreds of millions of dollars.”⁷⁷ A study authored by Topher McDougal of University of San Diego found that half of all gun stores in the U.S. would go out of business but-for the demand from Mexico.⁷⁸ Although manufacturers may well try to blame others along this chain, they are best-positioned to put an end to the violence.⁷⁹ Attempting to stem the flow of firearms at the border

⁷⁵ The Educational Fund to Stop Gun Violence, *Justice Denied: The Case Against Gun Industry Immunity* (Oct. 2013) at 7, <http://efsgv.org/wp-content/uploads/2013/10/Justice-Denied-Report-PDF.pdf>.

⁷⁶ Chairwoman Carolyn B. Maloney, *Memorandum to the members of the Committee on Oversight and Reform concerning The Committee’s Investigation into Gun Industry Practices and Profits* (Jul. 27, 2022), <https://docs.house.gov/meetings/GO/GO00/20220727/115024/HHRG-117-GO00-20220727-SD005.pdf>.

⁷⁷ Harp, *supra* note 13.

⁷⁸ McDougal et al., *supra* note 1.

⁷⁹ Liz Mineo, *Stopping Toxic Flow of Guns from U.S. to Mexico*, Harvard Gazette (Feb. 18, 2022), <https://news.harvard.edu/gazette/story/2022/02/stopping-toxic-flow-of-gun-traffic-from-u-s-to-mexico/>. Indeed, experts have identified gun manufacturers’ practices as a critical point of intervention in the effort to stem gun violence. See Am. Academy of Family Physicians, *Gun Violence, Prevention of*

is a nearly impossible task, as the sheer volume is too great.⁸⁰ And even where law enforcement successfully stop and prosecute an individual gun smuggler, cartels are readily able to find a replacement among the disadvantaged and vulnerable that overwhelmingly serve in such roles.⁸¹ Manufacturers, in contrast, are uniquely positioned to prevent their firearms from entering the illegal market to begin with.

But, in spite of “their knowledge of the widespread diversion of their products, gun manufacturers have not taken steps to control diversion and instead maintain distribution systems that funnel guns to traffickers and into the illegal market.”⁸² The result—whether a victim of gun violence in Mexico or another fentanyl fatality in the United States—is deadly.

CONCLUSION

The Court should reject Defendants-Appellees’ effort to evade accountability for their wrongdoing and reverse the District Court’s grant of the motion to dismiss.

(*Position Paper*), <https://www.aafp.org/about/policies/all/gun-violence.html> (calling for, among other things, “restrictions on the manufacturing and sale, for civilian use, of large-capacity magazines and firearms with features designed to increase their rapid and extended killing capacity”); Ryan Busse, *The Gun Industry Created a New Consumer. Now It’s Killing Us*. (July 29, 2022), <https://www.theatlantic.com/ideas/archive/2022/07/firearms-industry-marketing-mass-shooter/670621/> (arguing manufacturers’ marketing tactics fuel gun violence).

⁸⁰ McDougal et al., *supra* note 1, at 5 (“conclud[ing] that ongoing government efforts to regulate firearms trade and trafficking across the U.S.-Mexico border are largely ineffective” because such efforts “are still meager in relation to the overall volume of weapons likely crossing the border”).

⁸¹ *See, e.g., infra*, nn. 5–7.

⁸² Rostron, *supra* note 12, at iv.

Respectfully submitted,

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I hereby certify that on March 21, 2023, I electronically transmitted *Amici Curiae*'s Brief to the Clerk's Office and served it on counsel of record using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing.

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